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Consideration of the draft convention against transnational organized crime

DRAFT PROTOCOL TO COMBAT INTERNATIONAL TRAFFICKING IN WOMEN AND CHILDREN SUPPLEMENTARY TO THE UNITED NATIONS CONVENTION ON TRANSNATIONAL ORGANIZED CRIME

Proposal submitted by the United States of America

The States Parties to this Protocol,

(a) *Taking note* of the United Nations Convention against Transnational Organized Crime (hereinafter referred to as "the Convention"),

(b) *Gravely concerned* by the significant and increasing activities of transnational criminal organizations and others that profit from international trafficking in persons,

(c) *Believing* that women and children are particularly vulnerable to and targeted by transnational criminal organizations engaged in trafficking in persons,

(d) *Declaring* that effective action to combat international trafficking in persons, particularly women and children, requires a comprehensive, international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking,

(e) *Considering* the need to punish traffickers and to protect victims of trafficking in persons, including by protecting internationally recognized human rights,

(f) *Concerned* that, in the absence of a modern, universal instrument on such matters, persons who are vulnerable to such trafficking will not be sufficiently protected,

(g) *Recalling* General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, *inter alia*, an international instrument addressing trafficking in women and children,

(h) *Convinced* that an international instrument against trafficking in persons, particularly women and children, would be useful in combating such crime,

(i) *Taking into account* the provisions of the Convention,

Have agreed as follows:

Article 1
Statement of objectives

The purpose of this Protocol is to promote and facilitate cooperation among States Parties to prevent, investigate and prosecute trafficking in persons for the purpose of forced labour, prostitution or other sexual exploitation, giving particular attention to the protection of women and children, who are so often the victims of organized crime.

Article 2
Scope of application

1. This Protocol shall apply to trafficking in persons as defined in paragraph 2 of this article.

2. For purpose of this Protocol, "trafficking in persons" means the recruitment, transportation, transfer, harbouring or receipt of persons:

(a) By the threat or use of kidnapping, force, fraud, deception or coercion; or

(b) By the giving or receiving of unlawful payments or benefits to achieve the consent of a person having control over another person, for the purpose of prostitution or other sexual exploitation or forced labour.

3. For purpose of this Protocol, trafficking in persons for the purpose of prostitution includes subjecting to such trafficking a child under the age of consent (in the jurisdiction where the offence occurs), regardless of whether that child has consented.

4. The provisions of this Protocol shall not affect obligations under any national legislation or any treaty, bilateral or multilateral, which governs or will govern, in whole or in part, this subject matter.

Article 3
Obligation to criminalize

1. Each State Party shall adopt such measures as may be necessary to establish as criminal offences under its domestic law the conduct set forth in article 2, paragraph 2, and shall impose penalties that take into account the grave nature of those offences.

2. Each State Party shall also adopt such measures as may be necessary to establish as criminal offences under its domestic law the following conduct and shall impose penalties that take into account the grave nature of those offences:

(a) Attempting to commit an offence set forth in article 2, paragraph 2;

(b) Participating as an accomplice in an offence set forth in article 2, paragraph 2;

(c) Organizing or directing others to commit an offence set forth in article 2, paragraph 2; or

(d) In any other way contributing to the commission of an offence set forth in article 2, paragraph 2, by a group of persons acting with a common purpose; such contribution shall be intentional, regardless of whether it was made with the aim of furthering the general criminal activity or purpose of the group or in the knowledge of the intention of the group to commit the offence concerned.

3. The knowledge, intent or purpose required to combat an offence set forth in article 2, paragraph 2, or in paragraph 2 of this article may be inferred from objective factual circumstances.

Article 4
Victims of trafficking in persons[1]

1. Each State Party shall ensure that its legislative framework contains measures that permit, in appropriate cases:

(a) Providing for the safe and voluntary return of victims of trafficking in persons to their countries of origin, their habitual residences or third countries;

(b) Providing victims of such trafficking access to adequate procedures to seek:

(i) Compensation for damages, including compensation coming from fines, penalties or forfeited assets of perpetrators of such trafficking; and

(ii) Restitution from the offenders;

(c) Providing:

(i) Information to victims of such trafficking in regard to the relevant court and administrative proceedings; and

(ii) Assistance to victims of crimes covered by this Protocol, enabling their views and concerns to be presented and considered at appropriate stages of the criminal proceedings against the offenders, in a manner not prejudicial to the rights of the defence; and

(d) Providing appropriate housing, education and care for detained children.

2. Each State shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory. Each State Party shall consider implementing the following measures:

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[1] States should consider whether this article should include a provision requiring States to accept the return of their nationals.

(a) Providing immigration laws that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases;

(b) Providing for the physical, psychological and social recovery of victims of and witnesses to trafficking in persons, in order to foster their health, self-respect and dignity, in a manner appropriate to their age, gender and special needs.

Article 5
Law enforcement measures

1. Law enforcement authorities of States Parties shall cooperate with one another in order to exchange information to enable them to determine:

(a) Whether individuals crossing or attempting to cross an international border with documents belonging to others are perpetrators or victims of trafficking in persons;

(b) Whether individuals have used or attempted to use altered or falsified documentation to cross an international border for the purpose of trafficking in persons;

(c) The methods used by organized groups for transporting victims of such trafficking under false identities, or with altered or falsified documentation, and the measures for detecting them; and

(d) Methods and means used for trafficking in persons, including recruitment, routes and links between and among individuals and groups engaged in such trafficking.

2. Each State Party shall provide or strengthen training to combat trafficking in persons for law enforcement, immigration and other relevant officials. The training should include components focusing on preventing trafficking in persons, prosecuting perpetrators of such trafficking, encouraging cooperation with appropriate non-governmental organizations and protecting the rights of the victims.

Article 6
Prevention of trafficking in persons

1. In addition to measures provided pursuant to article 5, each State Party shall take measures to ensure that it provides or strengthens information programmes to promote awareness among the public at large, including potential victims and their families, of the causes and consequences of trafficking in persons, including the criminal penalties and risks to the life and health of the victim.

2. Each State Party shall consider establishing social policies and programmes to prevent:

(a) Trafficking in persons; and

(b) The revictimization of trafficked persons.

Article 7
Other provisions[2]

The provisions of articles [...] to [...] of the Convention shall also apply *mutatis mutandis* to this Protocol.

Article 8
Signature, accession and ratification

1. This Protocol shall be open to all States for signature at [...] from [...] to [...] and thereafter at United Nations Headquarters in New York until [...].

2. This Protocol is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. This Protocol is subject to accession by any State.[3] Instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 9
Entry into force

1. This Protocol shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the [...][4] instrument of ratification or accession [; however, this Protocol shall not enter into force before the Convention has entered into force].

2. For each State Party ratifying or acceding to the Protocol after its entry into force, the Protocol shall enter into force on the thirtieth day after the deposit by such State of the instrument of ratification or accession. [The Protocol can rely on the provisions of the Convention on denunciation, amendment, languages and depository.]

In witness whereof, the undersigned, being duly authorized by their respective governments, have signed this Protocol.

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[2]Pursuant to article 7, many of the provisions of the Convention will be applicable to this Protocol. It will be necessary to ensure, once the language of the Convention is finalized, that any necessary modifications to the language of the Convention are encompassed by the *mutatis mutandis* language in article 7. If it is determined that the corresponding provisions in the Convention are not broad enough to meet the needs of the Protocol, then additional provisions will need to be added to the Protocol. The provisions in the Convention on, for example, extradition and mutual legal assistance, protection of witnesses, measures to enhance cooperation with law enforcement authorities, and law enforcement cooperation should be applicable to the subject matter of the Protocol. If it is determined that the provisions of the Convention on these issues are not adequate to cover the needs of the Protocol, then additional articles should be added to the Protocol.

[3] States should consider whether States that are not parties to the Convention will be allowed to be parties to the Protocol and vice versa.

[4] States should consider whether the Protocol should enter into force with the same number of instruments of ratification or accession as the Convention or with fewer or more instruments.